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NONDISCRIMINATION AND WARRANTY REQUIREMENT FOR CONTRACTORS

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This report provides a brief summary of the law requiring certain nondiscrimination and warranty provisions in contracts that the state or one of its political subdivisions enters into.

SUMMARY

With certain exceptions, state law requires contracts that the state or one of its political subdivisions, other than a municipality, enters into to contain nondiscrimination and warranty provisions that protect people based on race, color, religion, age, marital status, national origin, ancestry, sex, intellectual disability, physical or mental disability, or sexual orientation (i.e., protected classes) ([CGS §§ 4a-60](#) and [-60a](#)). Contracts between government or quasi-government entities are exempt from the requirement.

Before entering into a contract subject to the requirement, contractors must demonstrate compliance with the nondiscrimination agreement and warranty. Contractors with contracts valued at \$50,000 or more for any year of the contract must provide or have previously provided one of three specified types of documentation. Those with contracts of less than \$50,000 per year must provide or have previously provided a written representation that complies with the nondiscrimination agreement and warranty.

For purposes of this law, “contract” includes any extension or modification of the contract, and “contractor” includes any successors or assigns of the contractor.

NONDISCRIMINATION AND WARRANTY PROVISIONS

Generally, in contracts subject to the nondiscrimination and warranty requirement, the contractor must agree:

1. and warrant that it will not discriminate or permit discrimination in the performance of the contract against any member of a protected class, unless the contractor shows that a disability prevents a person from performing work required under the contract;
2. to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated without regard to their protected class status, unless the contractor shows that a disability prevents a person from performing work required under the contract;
3. to state that it is an “affirmative action-equal opportunity employer” in its solicitations or advertisements for employees in accordance with Commission on Human Rights and Opportunities (CHRO) regulations;
4. to provide each labor union, workers’ representative, or vendor with which it has a collective bargaining agreement, contract, or other understanding, a CHRO notice containing advice on the nondiscrimination provision requirements and to post copies of the notice in conspicuous places;
5. to file compliance reports with CHRO as required by law and to comply with applicable CHRO regulations and orders; and
6. to provide CHRO with information it requests and allow it to access pertinent books, records, and accounts concerning the contractor’s nondiscrimination practices and procedures.

Special Requirement for Public Works Contracts

In the case of a public works contract, the contractor must agree and warrant that it will make good faith efforts to employ minority business enterprises as subcontractors and materials suppliers. The contractor must develop and maintain adequate documentation of its good faith efforts.

By law, a “public works contract” is an agreement between an individual or entity and the state or one of its political subdivisions, other than a municipality, for the construction, rehabilitation, conversion, extension, demolition, or repair of a public building, highway, or other changes in real property. Public works contracts include private projects financed in whole or in part by the state. A “minority business enterprise” is a small contractor or materials supplier that has at least 51% of its capital stock or assets owned by people who (1) are active in its daily affairs, (2) have the power to manage it and direct its policies, and (3) are members of a minority (i.e., racial minority groups and women).

AFFIRMATIONS REQUIRED BEFORE ENTERING INTO THE CONTRACT

Contractors must demonstrate compliance with the nondiscrimination agreement and warranty before entering into a contract subject to the requirement. To demonstrate compliance, contractors with contracts valued at \$50,000 or more for any year of the contract must provide or have previously provided:

1. their company's nondiscrimination policy adopted by a resolution of its governing body;
2. a policy adopted by a prior resolution of the governing body that a duly authorized corporate officer certifies is still in effect and that the head of the contracting agency certifies complies with the law's nondiscrimination agreement and warranty; or
3. an affidavit, signed under penalty of false statement by a corporate officer duly authorized to adopt company policy, certifying that the policy complies with the law's nondiscrimination agreement and warranty and is effective on the date the affidavit is signed.

Contractors with contracts valued below the \$50,000 threshold must give or have previously given the state or political subdivision, as applicable, a written representation that complies with the nondiscrimination agreement and warranty.

If there is a change to the information contained in the contractor's representation or documentation on file with the state or political subdivision, the contractor must file an updated representation or documentation within 30 days of the change or upon executing a new contract, whichever is earlier. Contractors must also annually certify that the representation or documentation on file with the state or political subdivision is current and accurate.

CONTRACTS EXEMPT FROM THE REQUIREMENT

The law generally exempts contracts between public sector entities from the nondiscrimination and warranty requirement. Specifically, it exempts contracts entered into by the state or a political subdivision in which the other party is:

1. a political subdivision, including a municipality;
2. a quasi-public agency;
3. another state;
4. the federal government;
5. a foreign government; or
6. an agency of any of the above.

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